



Rule and Interpretive/Policy Statement Review Checklist
(This form must be filled out electronically.)

This form is to be used when the current version of the rule(s) has/have not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.

All responses should be **bolded**.

Document(s) Reviewed (include title): **WAC 458-20-228, Returns, remittances, penalties, extensions, interest, stay of collection.**

Date last adopted/issued: **3/12/2001**

Reviewer: **Pat Moses**

Date review completed: **4/20/04**

Briefly explain the subject matter of the document(s):

- ♦ **Rule 228 details the application of law, departmental policies, court cases, and administrative determinations as they relate to: filing returns; when tax payments are due; how payments received against tax liability are applied; various penalties relating to excise tax; extension of due dates; application of interest; and stays of collection.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the information provided in the document so obsolete that it is of little value, warranting the repeal or revision of the document?
X		Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)



X	Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)
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Please explain.

- **Rule 228 is necessary to promote consistent application of the statutes involved. It is also necessary to explain the administration of these statutes within the Department of Revenue so that taxpayers and agency personnel understand the standards being applied and what rights or options taxpayers have regarding the application of penalties and interest. This rule explains the interest and penalties imposed by law when a taxpayer fails to timely pay the correct amount of tax. The Department is only authorized to waive interest or penalties under limited circumstances. The rule provides examples of circumstances that qualify for a waiver of interest or penalties, and explains how a taxpayer may request a waiver.**
- **The rule needs to be revised to reflect penalty statute changes passed into law in 2003 (Engrossed House Bill 2269, Chapter 13, 1st Special Session, Laws of 2003). This law change added new penalties and changed some of the penalty rates.**

3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

YES	NO	
	X	Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this interpretive or policy statement be incorporated into a rule?
		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that affect the information now provided in this document?



	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?
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If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

- **This rule was adopted 3/12/2001. Since that time there are no new/additional documents, statements, or decisions that need to be incorporated into this rule.**

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities or help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do administrative changes within the Department warrant repealing or revising this document?

Please explain.

- **This rule is clear and concise, while addressing a complex subject. Review of the latest tax decisions indicates that the rule is reasonable, clear, and to the point.**

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statute(s) that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no,” identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statute(s) being implemented by this document?

Please explain.

- **The department’s authority to make and publish rules is contained in RCW 82.01.060(2) and RCW 82.32.300.**

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.



YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

- **The department has exclusive authority for making and administering excise tax rules. The subject matter of Rule 228 (filing the excise tax return, penalties / interest applied to excise taxes, etc...) is the specific domain of the Department of Revenue.**

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer "yes" only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

- **This rule aids taxpayers by giving specific instructions and examples. The rule also promotes consistent and fair application of the related statutes on the part of DOR staff.**

9. LISTING OF DOCUMENTS REVIEWED: Use "bullets" with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented: **Refer to rule review issued June 1997. The following statutes have been revised since the rule was last adopted:**

- **RCW 82.32.033, Registration certificates -- Special events -- Promoter's duties -- Penalties -- Definitions.**



- RCW 82.32.045, Taxes -- When due and payable -- Reporting periods -- Verified annual returns -- Relief from filing requirements.
- RCW 82.32.050, Deficient tax or penalty payments -- Notice -- Interest -- Limitations.
- RCW 82.32.090, Late payment -- Disregard of written instructions -- Evasion -- Penalties. RCW 82.32.210, Tax warrant -- Filing -- Lien -- Effect.

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs): NONE

Court Decisions: NONE

Board of Tax Appeals Decisions (BTAs): NONE

Appeal Division Decisions (WTDs):

- **General waivers for late payment of return penalty:** 17 WTD 95 (1998), 17 WTD 186 (1998), 18 WTD 6 (1999), 18 WTD 23 (1999), 18 WTD 037 (1999), 18 WTD 90 (1999), 18 WTD 124 (1999), 18 WTD 241 (1999), 19 WTD 60 (2000), 19 WTD 303 (2000), 19 WTD 512 (2000), 19 WTD 577 (2000), 19 WTD 784 (2000), 20 WTD 106 (2001), 20 WTD 391 (2001), 20 WTD 525 (2001), 21 WTD 21 (2002), 22 WTD 5 (2003), 22 WTD 11 (2003), 23 WTD 26 (2004)
- **General lack of knowledge, unregistered, voluntary v. involuntary registrations (late payment of return penalty), active nonreporters:** 20 WTD 426 (2001), 21 WTD 264 (2002), 22 WTD 26 (2003), 22 WTD 126 (2003), 22 WTD 278 (2003)
- **Evasion penalty:** 17 WTD 326 (1998), 18 WTD 110 (1999), 18 WTD 163 (1999), 18 WTD 215 (1999), 19 WTD 101 (2000), 19 WTD 546 (2000), 19 WTD 560 (2000), 19 WTD 638 (2000), 19 WTD 698 (2000), 20 WTD 136 (2001), 22 WTD 274 (2003), 23 WTD 21 (2004)
- **Warrant penalty and interest applications:** 22 WTD 61 (2003)
- **Late payment of assessment penalty:** 19 WTD 981 (2000)
- **Buyer to pay, seller to collect:** 21 WTD 150 (2002)
- **Penalty waivers under the 24 month review:** 17 WTD 395 (1998), 18 WTD 227 (1999), 18 WTD 409 (1999), 19 WTD 603 (2000), 19 WTD 608 (2000), 19 WTD 960 (2000), 21 WTD 235 (2002)
- **Failure to follow written instructions:** 16 WTD 216 (1996)
- **Application of interest to tax liabilities / Waiver of interest:** 16 WTD 134 (1996), 17 WTD 417 (1998)
- **Penalty carried over to a successor:** 20 WTD 15 (2001)
- **Late payment of return penalty applied to EFT taxpayers:** 19 WTD 70 (2000), 19 WTD 708 (2000), 20 WTD 149 (2001), 21 WTD 42 (2002), 21 WTD 175 (2002), 21 WTD 128 (2002)

Attorney General Opinions (AGOs): NONE

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **Special Notice issued June 25, 2003 – Penalty Changes, The Cost of Making a Mistake Just Went Up**



- **News Release, June 2003 – Due Date for State Tax Return Changes to 20th of Month; Penalties Increase for Late Returns, Assessments, Unregistered Businesses**

10. Review Recommendation:

- X **Amend**
- _____ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- _____ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- _____ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- **The rule should be revised to incorporate penalty statute changes (new rates and penalties) passed into law in 2003 (Engrossed House Bill 2269, Chapter 13, 1st Special Session, Laws of 2003).**

11. Manager action: Date: April 30, 2004

 AL Reviewed and accepted recommendation

Amendment priority:

- X 1
- _____ 2
- _____ 3
- _____ 4